



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0339; FRL-9973-17-Region 8]

Montana Second 10-Year Carbon Monoxide Maintenance Plan for Missoula

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to re-approve a State Implementation Plan (SIP) revision submitted by the State of Montana. On September 19, 2016, the Governor of Montana submitted to the EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Missoula, Montana area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

DATES: Effective **[insert date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R08-OAR-2017-0339. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Clark, (303) 312-7104,
clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The factual background for this action is discussed in detail in our September 14, 2017 direct final rule (DFR) and proposal (82 FR 43180, 82 FR 43208) approving the revised Missoula Maintenance Plan into the Montana SIP. The EPA received one adverse comment on the rulemaking and attempted to withdraw the DFR prior to the effective date of November 13, 2017. However, the EPA inadvertently did not withdraw the DFR prior to that date and the rule became prematurely effective on November 13, 2017, revising the Montana SIP to reflect the approval of the revised Missoula Maintenance Plan. In this final rulemaking, the EPA is responding to the comments submitted on the proposed revision to the Montana SIP, and is re-approving the revised Missoula Maintenance Plan into the Montana SIP. The background information found in the DFR is still relevant and our September 14, 2017 proposal provides the basis for this final action.

The EPA finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act (APA) to make this action re-approving the revisions to the Montana SIP effective upon publication in the Federal Register. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). This rule does not create any new regulatory requirements and does not change any existing regulatory requirements. For these reasons, the EPA finds good cause under APA section 553(d)(3) for the re-approval to become effective on the date of publication of this action.

II. Response to Comments

The EPA received two anonymous public comments, one which we considered adverse, on our action to approve Montana's September 19, 2016 SIP submittal. Below is a summary of each comment and the EPA's response.

Comment: The first commenter asked whether we were "expecting any push-back" from businesses in extending the carbon monoxide plan for another 10 years.

Response: Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. With that, the EPA notes that we did not receive any comments from any individual businesses or business groups.

Comment: The second commenter asserted that the EPA had failed to consider the effects of approving the SIP submission on the economy or energy independence as required by a March 28, 2017 Executive Order entitled "Promoting Energy Independence and Economic Growth." (EO 13783).

Response: Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. The EPA cannot consider disapproving a SIP submission or require any changes based on EO 13783.

III. Final Action

The EPA is re-approving the revised Missoula Maintenance Plan submitted on September 19, 2016. This maintenance plan meets the applicable CAA requirements, and we have

determined it is sufficient to provide for maintenance of the 8-hour CO NAAQS over the course of the second 10-year maintenance period out to 2027. This rule, which responds to the adverse comment received, finalizes our proposed approval of the revised section of Montana's SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law provisions as meeting federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60

days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: January 24, 2018.

Signed: _____

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1373 is amended by revising paragraph (d) to read as follows:

§52.1373 Control strategy: Carbon monoxide.

* * * * *

(d) Revisions to the Montana State Implementation Plan, revised Carbon Monoxide Maintenance Plan for Missoula, as submitted by the Governor on September 19, 2016 (as approved by the EPA on **[Insert date of publication in the Federal Register]**).

[FR Doc. 2018-01854 Filed: 1/31/2018 8:45 am; Publication Date: 2/1/2018]